



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2013-0824; FRL-9928-35-Region 5]**

**Approval and Promulgation of Air Quality Implementation Plans;**

**Michigan; Part 3 Rules**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to the Part 3 rules into the Michigan State Implementation Plan (SIP). On December 13, 2013, the Michigan Department of Environmental Quality (MDEQ) submitted to EPA for approval revisions to Part 3, Emission Limitations and Prohibitions - Particulate Matter (PM), for open burning and electro-static precipitators (ESPs). The revisions for open burning eliminate specific provisions to allow household waste burning, and add a provision to allow for burning of fruit and vegetable storage bins for pest or disease control with specific location limitations. The SIP request also removes rule 330 dealing with operation parameters for electrostatic precipitators because of redundancy, and rule 349 dealing with compliance dates for coke ovens because it is now obsolete. EPA is approving this SIP revision because it will not interfere with attainment or

maintenance of the fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS).

**DATES:** This direct final rule will be effective [insert date 60 days after date of publication in the Federal Register], unless EPA receives adverse comments by [insert date 30 days after date of publication in the Federal Register]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No.

EPA-R05-OAR-2013-0824, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: blakley.pamela @epa.gov
3. Fax: (312) 692-2450.
4. Mail: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed

information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No.

EPA-R05-OAR-2013-0824. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to

consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon, Environmental Engineer, at (312)353-8290, before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)353-8290, [persoon.carolyn@epa.gov](mailto:persoon.carolyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is EPA's Analysis of the Part 3 Emission Limitations and Prohibitions - Particulate Matter Revisions?
- II. What Action is EPA Taking?
- III. Incorporation by Reference.
- IV. Statutory and Executive Order Reviews.

**I. What is EPA's Analysis of the Part 3 Emission Limitations and Prohibitions - Particulate Matter Revisions?**

**A. Background of Rule 310, 330, and 349**

EPA approved the Part 3 open burning rule (rule 310) into the Michigan SIP on November 2, 1988 (53 FR 44189), and amended it on June 28, 2002 (67 FR 43548). The rule prohibits open burning, with exceptions that originally included household waste, structures for fire training, trees, logs, brush and stumps located outside incorporated areas, beekeeping equipment, and logs, charcoal, and brush used for cooking or recreation. Revisions to the rule promulgated by the state on October 8, 2012, further prohibited residential burning of plastic, rubber, foam, chemically treated wood, textiles, electronics, chemicals, or hazardous materials. The revisions also allowed for burning of fruit or vegetable untreated wooden storage bins for disease or pest control, only if the burning did not occur in a class I or II area, in a city or village, or within 1400 feet of a city or village.

Along with the October 8, 2012, revisions to open burning

rule 310, Michigan rescinded both rule 330 and 349, electrostatic precipitator control parameters, and coke-oven compliance date, respectively. EPA originally approved rule 330 into the Michigan SIP on May 6, 1980 (45 FR 29790), and most recently approved a revision to it in an update of the Part 3 rules on June 1, 2006 (71 FR 31093). Rule 330 outlined operational parameters for ESPs on cement kilns, kraft recovery boilers, lime kilns, calciners, pulverized coal fired boilers, basic oxygen furnaces, and gypsum dryers, requiring that these electrostatic precipitators have an automatic control system approved by MDEQ. MDEQ found that the rule was redundant and rescinded it on April 1, 2013. MDEQ has provided documentation showing PM emission limits for the facilities subject to rule 330 have not changed, and that proper operation of control devices is still required by rule 910 in the Michigan SIP.

MDEQ also rescinded rule 349, which contained a compliance date of December 31, 1982, for coke ovens to meet requirements outlined in rules 350 and 357. Since the compliance date has long passed, and coke ovens must still comply with rules 350 and 357, MDEQ and EPA find this rule to be obsolete, and no analysis was required by the state.

On October 8, 2012, and March 25, 2013, the MDEQ filed, and the Michigan Secretary of State approved these rule changes in accordance with the provisions of Section 46(1) of Act 306,

Public Acts of 1969, as amended, and Executive Order 1995-6. The rules became effective on April 1, 2013. Subsequently, MDEQ published in the May 6, 2013 MDEQ Environmental Calendar, located at <http://www.michigan.gov/envcalendar>, a public notice addressing revision of the SIP, and asking for public comment if the rules should be incorporated into the SIP. There were no requests for a public hearing, and no public comments were received.

#### **B. Analysis of Revisions to Rules 310, 330, and 349**

EPA's approval is based on consideration of whether the revisions to and rescissions of rules meet the requirements of section 110(1) of the Clean Air Act (CAA), 42 U.S.C. 7410(1). In particular, EPA considered whether the changes made to the Part 3 rules in the Michigan SIP will impact Michigan's ability to attain and maintain both the annual PM standard (2012) and the 24-hour PM standard (2006).

Under CAA section 110(1), the state must show that the SIP revision will not interfere with attainment and maintenance of all existing PM standards, which, in the case of revisions to Part 3 of the Michigan SIP, would be the annual standard of 12 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) promulgated in 2012 and the 24-hour standard of 35  $\mu\text{g}/\text{m}^3$  promulgated in 2006. Based on the most current three-year monitoring design values (2011-2013), the entire state of Michigan is attaining the annual and 24-hour

standard, with annual design values ranging from 5.9 to 11.3  $\mu\text{g}/\text{m}^3$ , and 24-hour design values ranging from 16 to 26  $\mu\text{g}/\text{m}^3$ . See EPA's web site under the Design Values tab for PM, Table 6, at <http://www.epa.gov/airtrends/values.html>; data can also be found in the docket. Initial data from 2012-2014 indicates the entire state continues to attain and PM monitoring values continue to decline, indicating that the 2013 revisions to these rules has not interfered with attainment of the standards.

To support the revisions and address the ability of Michigan to maintain the PM standards in the future with these revisions, the state did a conservative analysis of potential emissions and impacts from the additional open burning of fruit and vegetable crates. MDEQ has estimated annual maximum emissions from these additional sources to be 30 tons per year (tpy) across the entire state.<sup>1</sup> The rule only allows open burning of crates happen in rural areas. The highest monitored background concentrations in rural areas are 8 $\mu\text{g}/\text{m}^3$  for the annual standard and 20 $\mu\text{g}/\text{m}^3$  for the 24-hour standard. EPA's AERSCREEN tool estimates a maximum localized concentration increase of 3 $\mu\text{g}/\text{m}^3$ . This maximum addition of 3 $\mu\text{g}/\text{m}^3$  PM<sub>2.5</sub> to the highest maximum rural concentration, where burning is allowed, does not cause a violation of either the annual PM<sub>2.5</sub> or the 24-hour standard. EPA also considered the air quality impact on urban areas,



because the rule does not allow burning in an urban area EPA considered the potential increase to be  $0\mu\text{g}/\text{m}^3$ , resulting in no increase to the attaining monitored values. Therefore, EPA has concluded that changes to the Michigan SIP 310 Open Burning Rule does not interfere with attainment or maintenance of the NAAQS.

For the analysis of the rescission of the ESP operations rule 330, MDEQ provided a list of facilities subject to the ESP operating parameters, which can be found in the docket. EPA has determined that emission limits for either PM or opacity exist for each of the sources, either through permits to install, which are permanent and enforceable construction permits, or the National Emissions Standards for Hazardous Air Pollutants , 40 CFR part 63, subpart UUUUU (utility MACTs or MATs). Thus, rescission of rule 330 will not affect the obligation of these facilities to continue to meet their PM or opacity emission limits. These existing limits are permanent and enforceable. Further, the utility MACT standards are Federal rules which require installation of the maximum control technology available to the sector at this point in time and, if updated, will reflect greater efficiency and removal as technology evolves. The permits to install are permanent and enforceable and, if the facility would like to change the limits, it must either find offsets (for nonattainment new source review (NSR)) or provide

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1 The state's analysis can be found in the docket for this rulemaking.

modeling that shows compliance with the NAAQS (for prevention of significant deterioration (PSD)/NSR), the same analysis under Section 110(1) of the CAA that the state must use when proposing changes to a SIP. Therefore no future protection of the NAAQS is lost.

EPA has determined that the rescission of this rule will not interfere with attainment of the NAAQS, as the area is currently attainment and the current emission limits for the facilities that were subject to 330 are not affected by the rescission. EPA has also determined that the rescission will not affect maintenance. MDEQ has demonstrated that any changes to current PM or opacity emission limits in permits will become more stringent through the utility MACTs and that sources will have to demonstrate compliance with the NAAQS through modeling or offsets if a permit to install is modified.

EPA finds that the recession of rule 340, compliance date for coke ovens, does not require a 110(1) analysis, since the compliance date has long past, and the rule is obsolete.

EPA has determined that the Michigan SIP revisions are therefore approvable because they meet the requirements of 110(1).

## **II. What Action is EPA Taking?**

EPA is approving into the Michigan SIP revisions to Part 3, including the revisions to open burning rule 310, removal of rule

330, ESP operating provisions, and removal of rule 340, compliance date. Specifically, EPA is approving into the SIP R 336.1310 and removing R 336.1330 and R 336.1349. The revisions to Part 3 are approvable, since EPA's analysis under worst case conditions indicates these revisions will not interfere with attaining or maintaining the NAAQS, as prescribed by section 110(1) of the CAA. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan amendment if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days after the date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days after the date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section

of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of this rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective

**[insert date 60 days after the date of publication in the Federal Register]**.

### **III. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Michigan Regulations described in the amendments to 40 CFR part 52 as set forth below. EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional

requirements. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995

(15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take

effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication of this document in the Federal Register]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Particulate Matter, Reporting and recordkeeping requirements.

Dated: May 18, 2015.

Susan Hedman,  
Regional Administrator, Region 5.



40 CFR part 52 is amended as follows:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. In § 52.1170 the table in paragraph (c) is amended under "Part 3. Emission Limitations and Prohibitions-Particulate Matter" by:

a. Revising the entry for R 336.1310.

b. Removing the entries for R 336.1330 and R 336.1349.

The revised text reads as follows:

**§ 52.1170 Identification of plan.**

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(c) \* \* \*

**EPA—APPROVED MICHIGAN REGULATIONS**

Michigan citation	Title	State effective date	EPA approval date	Comments
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<b>Part 3. Emission Limitations and Prohibitions-Particulate Matter</b>				
* * *	* * *	* * *		
R 336.1310	Open burning	04/01/13	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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[FR Doc. 2015-13118 Filed: 6/1/2015 08:45 am; Publication Date:  
6/2/2015]